In the
Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-1429

PARTICULAR CLEANERS, INC. and FRANCES ENTWISTLE,

Petitioners,

vs.

COMMONWEALTH EDISON COMPANY,

Respondent.

SECOND SUPPLEMENTAL BRIEF OF PETITIONERS

This Second Supplemental Brief is necessary in order to correct an erroneous statement made by respondent Commonwealth Edison in its Reply to Supplemental Brief, filed July 14, 1972.

Petitioners had correctly asserted in their Supplemental Brief that the Seventh Circuit's decision in the instant case conflicts with *Ihrke* v. *Northern States Power Co.*, ... F.2d ....., Util. L. Rep. ¶21,740 (8 Cir., May 3, 1972).

In its Reply to Supplemental Brief, respondent attempted to distinguish *Ihrke* from the instant case, asserting that in *Ihrke* the city received 5% of the utility's gross

earnings and thus benefited from payments to the utility, while such a "special factor" is not present in the instant case. Such attempt to distinguish the two cases is wholly erroneous.

In the instant case, the State of Illinois receives 5% of Commonwealth Edison's gross receipts and thus benefits from payments to the utility, just as in *Ihrke*. The 5% is collected by the State of Illinois pursuant to Section 2 of the Public Utilities Revenue Act (Ill. Rev. Stats., chap. 120 § 469).

Thus it is clear that respondent is acting under color of state law and there is a conflict of circuits.

Respectfully submitted,

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